

MINUTES OF THE CITY PLANNING COMMISSION

J. MARTIN GRIESEL ROOM

February 7, 2003
9:00 AM

Present: Appointed Members: Caleb Faux, Jackie McCray, Terry Hankner, Donald Mooney, Peter Witte; Councilmember Jim Tarbell; Community Development and Planning Staff: Steven Kurtz, Administrator, Land Use Management

Mr. Mooney called the meeting to order.

MINUTES

The minutes of the December 20, 2002, City Planning Commission (CPC) meeting were presented for consideration.

Motion: Mr. Faux moved approval of the minutes.

Second: Ms. McCray

Vote: All ayes (6-0)

CONSENT ITEMS

PROPOSED SALE OF PROPERTY AT 315 WEST COURT STREET TO CINCINNATI FIRE MUSEUM ASSOCIATION.

Mr. Tarbell stated that he has concern about the city having the option to take the property back if the property no longer operates as a fire museum. Mr. Tarbell would want the property to automatically revert back to the city if the property ceased to operate as a fire museum.

Mr. Kurtz stated that if the property ceased to operate as a fire museum it would give the city the option to take the property back or possibly find another use for the property through the Fire Department.

Motion: Mr. Tarbell moved approval of the sale of the property subject to reversion to the city in the event that it is no longer used as a fire museum.

Second: Jackie McCray

Vote: All ayes (6-0), motion carries.

PROPOSED SALE OF PROPERTY AT 4213 SPRING GROVE AVENUE IN NORTHSIDE.**PROPOSED SUBDIVISION IMPROVEMENT PLAN FOR THE MILLS OF CARTHAGE SUBDIVISION, PHASE 2 IN THE NEIGHBORHOOD OF CARTHAGE.**

Terry Hankner asked who the developer is for the Mills of Carthage. Steve Briggs responded that Potterhill Homes is the developer.

Motion: Ms. Hanker moved approval of Consent Items 1 and 3.

Second: Mr. Faux

Vote: All ayes (6-0), motion carries.

DISCUSSION**PROPOSED ZONE CHANGE FROM R-3 TWO-FAMILY DISTRICT TO R-4 MULTI-FAMILY LOW-DENSITY DISTRICT AT 2722 COX LANE IN OAKLEY.**

Mr. Kurtz presented the Cox Lane zone change; stated that the request is from an R-3 Two-Family District to an R-4 Multi-Family Low-Density District. Mr. Kurtz stated that the reason for the zone change is to allow the vacant parcel to serve as parking for the apartment building that fronts on Edwards Road which is owned by Morris Investments who also owns the vacant lot. The present R-3 District does not allow a parking lot in a more restrictive district to serve a use in a less restrictive district. Cox Lane is a private street; the cars that will use the proposed parking lot will serve the cars from the apartment building so it is an existing use and will not increase traffic. This parking lot should alleviate on-street parking on Arbor Avenue and Edroy Court. There is a traffic light on Edwards Road at Cox Lane so there is some controlled egress from Cox Lane. Staff recommends approval.

Anne McBride, 5725 Dragon Way #220, 45227, stated that for point of clarification that the staff report names the property as 2722 Cox Lane but the subject property is 2720 Cox Lane. Morris Investments owns a 19-unit apartment building, a single-family residence that is rented out and a vacant lot. The on street parking on Edwards Road has been eliminated with the reconfiguration of lanes. Submitted a plan of the parking lot with 24 spaces that would be designated with apartment numbers, screening fence and landscaping. There would be a speed bump constructed at the entrance to the parking lot. The property to the north and west is already zoned R-4, to the south is Cox Lane and to the east is property that is owned by Morris Investments that would remain R-3. The request is only to serve the residents of the existing apartment building. The entrance to the parking lot is within 200 feet of Edwards Road so there will be no traffic going down Cox Lane or creating additional traffic.

Chris Finney, 2623 Erie Avenue, 45230, stated that he represents Morris Investments as well as the owner next to the apartment building who supports the zone change. Morris Investments is willing to pay 60% of the repaving of Cox Lane and 35% of the

long-term maintenance which was agreed to six months ago with Mr. Winans. Tried to negotiate a maintenance agreement in good faith with the residents on Cox Lane but have not been able to get a good faith response.

James Sachs, 7710 Shawnee Run, 45243, stated that he agrees with what has already been stated.

OPPONENTS

Robert Sheard, 2724 Cox Lane, 45209, brought a petition of opposition signed by eight of the nine homeowners on the street. Mr. Sheard stated that the petition is broken into two sections, the six reasons for opposition to the parking lot and four rebuttals to the conclusions made by the Community Development and Planning staff.

Reasons for opposition:

1. Difficult to safely turn onto Cox Lane from northbound Edwards Road because of the width of Cox Lane.
2. Safety issues
3. No one wants a 24 car parking lot put 20 yards from their house in a residential neighborhood
4. Tenants have been illegally parking on the vacant lot for years and the owner has done nothing to discourage this illegal use.
5. Morris Investments' illegal use of the vacant lot has caused significant damage to Cox Lane; the first third of Cox Lane is obliterated from all the traffic yet Morris investments have made no attempt to correct the potholes.
6. Residents have attempted to negotiate with Morris Investments but Morris Investments was not negotiating in good faith.

Rebuttals to conclusions:

1. Believes R-4 will allow medical uses and parking lots.
2. Having hearings is a waste of time and may as well not have zoning laws.
3. There is garage space under the apartments and the residents on Cox Lane should not be subjected to a 24-car parking lot.
4. The parking lot may decrease traffic on Edroy but will vastly increase traffic on Cox Lane.

Mr. Faux stated that he has a hard time concluding that 24 cars will create a vast increase in traffic and has a difficult time finding it credible that 24 cars can destroy a street. Mr. Sheard replied that the top third of the street is destroyed and the other two thirds is in excellent condition.

Mr. Faux asked what was being negotiated. Mr. Sheard replied that the primary negotiation is to get Morris Investments to pave and maintain the first 40% of the street.

Greg Winans, 2732 Cox Lane, 45209, stated that he is the owner of Cox Lane. Mr. Mooney asked why the apartment units could use the street at all. Mr. Winans replied

there is an easement for all of Morris Investments property. As of two weeks ago, Mr. Winans stated that he supported the zone change. Mr. Winans stated that no one parks on Edroy or Arbor but they park on Cox Lane and in the vacant lot.

Ms. Hankner asked if the problem is the language of the construction and maintenance agreement. Mr. Winans responded that is the problem. No one wants any additional easements.

Mr. Winans stated that Morris has agreed to pay \$3500 for the repaving and 35% of the maintenance except snow removal. The eight-page agreement is a concern. The Oakley Community Council supports the zone change contingent upon a maintenance agreement being recorded with the County Auditor.

Mr. Finney stated that he wanted to document a maintenance agreement that has been signed by seven residences on the street 40 years ago. Stated that he only restated the existing easement and maintenance agreement. Mr. Finney drafted an agreement that states they are entering into an easement, get the zoning, put the money into escrow and sign the permanent easement and build the parking lot. The escrow agreement states if the zone change is approved, the easement agreement is signed, they will get the money. The third thing is the restated agreement. Mr. Winans only disagrees with the easement language which Mr. Finney read into the record.

Mr. Mooney asked staff if the Planning Commission approved the zone change if there is anything the City Planning Commission could do to require Morris to maintain or pave the private road from the parking lot up Cox. Mr. Kurtz replied staff could only strongly suggest but not require and make the recommendation that City Council also strongly suggest.

Ms. McCray suggested that the zone change be tabled for two weeks.

Mrs. Schwartz stated that when Morris Investments purchased the property in April 1999, Cox Lane was already in poor condition and Morris tried to contact the prior owner.

Tom Otterman, 2734 Cox Lane, 45209, stated that the maintenance agreement is important. Has a safety concern.

Motion: Ms. McCray moved to table for two weeks.

Second: Mr. Tarbell

Vote: All ayes (6-0), motion carries.

OTHER BUSINESS

Mr. Mooney stated that residents in Clifton contacted him concerning about the issue of fast food restaurants and whether or not the provisions of the Clifton EQ business district that attempts to prohibit fast food restaurants will be included in the new code.

Mr. Kurtz gave some background information. There are 14 EQ-UD Districts with 248 separate guidelines. The guidelines are currently not a part of the zoning code.

The guideline in question stipulates that not more than 35% of their business can be carry out and may not use single use utensils.

Clifton is the only district that has the guideline that says restaurants may not use single use utensils and it was not included in the new code because this guideline is unique to Clifton.

Mr. Kurtz passed out language from the draft zoning code. In the new code, fast food restaurants would fall under the category of Restaurants Limited where you pay for your food when it is ordered and with no table service. The Clifton business district would be characterized as a Commercial Neighborhood Pedestrian Oriented District. In those districts, Restaurants Limited may not have drive-thrus and must be in a mixed-use building limited to 2500 square feet. Fast food restaurants would be difficult to build without a drive-thru except for Downtown and they are all stand-alone buildings except downtown. This regulation will help keep fast food restaurants from neighborhood business districts.

Staff is reluctant to include language that is unique to one neighborhood that staff believes is unenforceable.

Jack Brand, 3750 Middleton Avenue, 45220, stated that Clifton and its neighborhood business district is one of the most successful neighborhoods and neighborhood business districts in the city. There is no vacant space, rental space brings \$15 a foot and the community tries to keep trash to a minimum. Why take something that has been successful and passes muster legally and get rid of it. No problem with the language in the text of the draft code but supplement the section that currently exists for the Clifton EQ District. The Ohio Supreme Court said the ordinance was a valid means of enforcing the Zoning Code.

Mr. Mooney asked Mr. Kurtz if there is a way to have some limited special regulations to a particular neighborhood. Mr. Kurtz responded that staff can take a condition that is in the existing B-2 District that limits the square footage available for food preparation in a restaurant which would be easier to enforce than the percentage of carry out business or whether single use utensils are being used.

Mr. Kurtz stated that the EQ will be handled differently in the new code, there will be no automatic hearing, there is a set of standards in the code and if the standards are met they can get a permit without a hearing. Mr. Kurtz stated that staff has been directed to reduce the number of hearings and add certainty by codifying the subjective guidelines and turning them into regulations.

The Supreme Court upheld the guideline which states "new businesses should contribute to the desired mix of commercial activities; franchise establishments are acceptable provided they are primarily pedestrian and not automobile oriented." Staff believes this is what is addressed in the new code. Wants to be clear that single use utensils and the percentage of carry out was adopted after this was litigated.

Mr. Brand stated that he understands the purpose of the new zoning code is to streamline, but at the same time the code is for the protection of the residents of the city as well as applicants who want to build and develop. Feels that this section of the code should be included with what is already being proposed.

Mr. Mooney stated that the existing language should be included in the new zoning code because it has a certain holdover value to people who we want to keep in the city.

Kurtz stated his alternative language would be that no more than 45% of a floor area may be devoted to food preparation, related activities and other space not accessible to the public. Mr. Mooney feels this is more enforceable.

Jack Brand thinks that hearings allow the neighborhood to address certain issues that might not be apparent.

ELECTIONS

Motion: Don Mooney moved that he continue as chairman until the zoning code is finished.

Second: Ms. Hankner

Vote: All ayes (6-0)

ADJORNMENT

With no further business to consider, the meeting was adjourned.

Margaret M. Moertl, Director
Community Development & Planning

Donald J. Mooney, Chairman

Date:_____

Date:_____